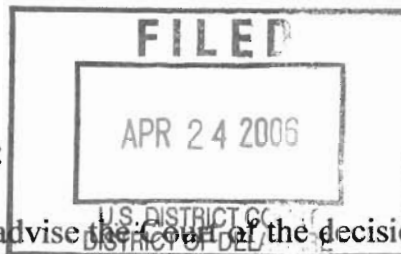


John H. Benge, Jr.  
P.O. Box 500  
Georgetown, DE 19947  
April 20, 2006

The Honorable Gregory M. Sleet  
United States District Court Judge  
United States District Court  
844 North King Street  
Wilmington, De 19801

Re: Benge v. Kearney, et al  
*Habeas Corpus* cases  
C.A. Nos. 05-0550(GMS)  
05-0551(GMS)

Dear Judge Sleet:



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I write to advise the Court of the decision of the Supreme Court of the State of Vermont in *State v. Provost*, \_\_ A.2d \_\_ (Vt., 2005), No. 2004-160, 2005 VT 134 (December 23, 2005) applying *Blakely v. Washington* to that state's sentencing scheme.

In *Provost*, the sentencing judge increased the defendant's sentence from four 35 year terms of imprisonment to four life sentences without parole on the basis of facts – aggravating factors under the Vermont sentencing scheme - that were not tried to the jury. In support of the sentencing scheme, the State argued that the aggravating factors were not “essential to the punishment:” that is, that there was no distinction drawn in the sentencing statute to the judge's power to impose either sentence. The Vermont Court rejected that proposition as inconsistent with *Apprendi* and *Blakely*; therefore, the presumptive sentence, a 35 year prison term, was constitutionally mandated under *Apprendi* and *Blakely*, rather than the enhanced life without parole sentence.

*Provost* is yet another application of *Apprendi* and *Blakely* that examines the functional impact – in a 6<sup>th</sup> Amendment sense - of a sentencing scheme in which facts not tried to a jury are used by the sentencing judge to increase a sentence above that otherwise prescribed by statute.

I realize that *Provost* was decided before the submission of my answering brief in each of the above cases; however, the opinion has just come to my attention during the past week and I see it as a significant decision.

Respectfully Submitted,

Cc: Thomas E. Brown, Esq.,  
Deputy Attorney General  
Clerk of the Court

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